



**PUBLIC WORKS DEPARTMENT
MEMORANDUM #2017-03**

DATE: JANUARY 9, 2017

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: James A. Hayes, AICP, City Manager 
David H. Willett, Director of Public Works 

SUBJECT: **Council Resolution #04**
Standley Lake Water Quality Intergovernmental Agreement (IGA) Renewal

PURPOSE

City Council will be considering the renewal of the Standley Lake Water Quality Intergovernmental Agreement.

BACKGROUND

The protection of Northglenn's drinking water source is one of the most important responsibilities of the Public Works department. Clear Creek is the primary drinking water source for the Cities of Northglenn and Westminster, and is one of the drinking water sources for the City of Thornton. Standley Lake is the Clear Creek water storage reservoir for all three cities. The cities of Westminster, Thornton, and Northglenn have been working together for decades to safeguard this valuable resource and have shared costs of the undertaking via an intergovernmental agreement. The *Intergovernmental Agreement Among the Cities of Northglenn, Thornton, and Westminster Concerning Sharing of Costs Related to Standley Lake and Clear Creek Water Quality Issues* (IGA) was first signed in 1995, with subsequent renewals in 2000, 2006, and 2011.

The IGA stipulates cost sharing for efforts related to preserving or improving water quality in Standley Lake and the Clear Creek watershed. Virtually no changes have been made to the document since 1995. Beginning in 2014, the Water Quality Committee, staff, supervisors, and City Attorneys have been working diligently on the process of updating the Agreement in order to incorporate language reflective of each city's evolving water quality goals and financial needs. The core values still remain in the updated document: maintaining a spirit of cooperation and protection of water quality in Standley Lake and the Clear Creek watershed.

PROPOSED MODIFICATIONS

Major changes to the 2017 IGA include the formulation of two separate "Programs" within the monitoring program (Core and Supporting; see Attachment A), a different budgeting system, and some minor editing/clarifications. Items or tasks within the Core Program are considered integral to protection of water quality and are financially supported by all three cities equally (33.33% each). The items or tasks within the Supporting Program are voluntary and each city can contribute financially or provide in-kind support as they deem beneficial. All contributions to each program will be determined and approved by the Water Quality Committee prior to the next year's budgeting.

The budget will continue to be overseen by Westminster, but there will be a change to the invoicing process. Currently, Westminster pays each debt, then sends invoices to each IGA signatory on individual items for reimbursement. The new invoicing system would change this labor-intensive process by sending an annual invoice at the beginning of the year for the total amount of the agreed upon Core and Supporting Program expenses. Westminster will pay all bills, and provide quarterly statements of moneys spent to Thornton and Northglenn. If funds remain in either program – Core

Standley Lake IGA
January 9, 2017

or Supporting – at the end of the year, the money will roll over into a reserve fund for each program of up to \$10,000 or be refunded at the appropriate percentage if the funds reach greater than \$10,000.

BUDGET IMPLICATIONS

At the Council study session in November 2016, council asked for updated percentages of shares held within Standley Lake. The following were the percentage of shares as of 11/28/16:

- FRICO – 3%
- Westminster – 45.4%
- Thornton – 16.5%
- Northglenn – 35%

Northglenn currently contributes about 20% of the total IGA budget. The updated shares information may help to guide Council in future budget considerations. Northglenn's budgeted contribution to the IGA has not changed at all in several years.

SCHEDULE/TIME IMPLICATIONS

Effective 2017.

RECOMMENDATION

Staff recommends approval of the renewal of the Standley Lake Water Quality IGA.

STAFF REFERENCE

Raymond Reling –Utilities Manager

rreling@northglenn.org or 303.450.4049

ATTACHMENTS

- Resolution
- A: Exhibits A & B - Core and Supporting Program List
- B: 2016 Updated/New IGA
- C: 2011 Previous IGA

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-4
Series of 2017

Series of 2017

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF NORTHGLENN, THORNTON AND WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the cities of Northglenn, Thornton and Westminster concerning the sharing of costs related to Standley Lake and Clear Creek water quality issues, attached hereto, is hereby approved by the City Council of the City of Northglenn, and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED, at Northglenn, Colorado, this _____ day of _____, 2017.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

INTERGOVERNMENTAL AGREEMENT
AMONG THE CITIES OF NORTHGLENN, THORNTON, AND
WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO
STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

THIS AGREEMENT is entered into this _____ day of _____, 2016, among the CITY OF NORTHGLENN, hereinafter referred to as "Northglenn," the CITY OF THORNTON, hereinafter referred to as "Thornton", and the CITY OF WESTMINSTER, hereinafter referred to as "Westminster". Northglenn, Thornton, and Westminster together are hereinafter referred to as "Cities".

I. RECITALS

- A. The Cities each own rights to store water in Standley Lake and other important water rights that are essential to providing a domestic water supply to the residents of the Cities.
- B. Protection of these water rights and the water quality of these sources of domestic drinking water are of paramount importance to the Cities.
- C. Article XIV, Section 18, of the Colorado Constitution, Part 2 of Article 1 of Title 29, C.R.S., and 29-20-105, C.R.S., permit and encourage local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized functions, services, or facilities.
- D. Pursuant to a series of Intergovernmental Agreements dated June 28, 1989, August 24, 1995, December 18, 2000, January 13, 2006, and March 23, 2011, the Cities have created a Standley Lake Watershed Monitoring Program "Monitoring Program", which is used to protect and monitor the quality of water in Clear Creek, the Tributary Basin, and Standley Lake. The Cities formed the Standley Lake Water Quality Committee "Committee", pursuant to Section II. B. 1, to manage that Monitoring Program, and have previously shared costs associated with the Monitoring Program and water quality protection efforts involving Standley Lake and its watershed.
- E. This Agreement represents the intent of the Cities for the continuation of, continued participation in, and administration of the Monitoring Program.
- F. It is beneficial for the Cities to pursue watershed protection for Standley Lake to protect and improve water quality and control drinking water treatment costs.
- G. It is beneficial and cost-effective for the Cities to mutually hire consultants, technical experts and legal counsel, conduct water quality monitoring, and implement water quality improvement projects by sharing costs related to water quality in the Clear Creek Basin, Tributary Basin, and Standley Lake in accordance with the goals and objectives adopted by the Committee, as the same may be amended from time to time (the "Goals and Objectives").

- H. The Cities have developed the following Mission Statement: *To optimize the quality and health of Standley Lake and its watershed as a drinking water supply for current and future generations through the application of scientifically based and fiscally responsible management techniques.*

II. AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, the Cities agree as follows:

A. Cooperative Efforts

1. For purposes of this Agreement, water quality efforts are divided into Core and Supporting Programs. This structure is intended to preserve key water quality elements while allowing for expanded efforts on an opt-in basis. The Core Program contains the essential elements of the Monitoring Program with which the Cities unanimously agree. The Supporting Program enhances and expands on the Core Program water quality efforts. The Supporting Program adds flexibility for funding special projects and efforts outside of the Core Program, and is subject to modification.
2. Core Program: The Cities mutually agree to participate in and equally fund core tasks associated with the protection of Standley Lake water quality. The scope of these integral tasks is termed the "Core Program" and is set forth in the attached Exhibit A. Costs associated with the Core Program shall be shared equally among each of the Cities with annual payments made as provided in Section II. D.1, below. Exhibit A will be reviewed by the Committee as needed to ensure the scope remains appropriate for Standley Lake water quality protection.
 - a. The Core Program's annual operating budget must be adopted with unanimous commitment and consent of the Committee. Any budgeted activity may commence once appropriated funds are available.
3. Supporting Program: Participation in Supporting Program tasks are voluntary in nature. The scope of these supporting tasks is termed the "Supporting Program" and is set forth in the attached Exhibit B, and expressly includes the Monitoring Plan. City contributions for Supporting Program tasks shall be made as provided in Section II. D.2, below. The Supporting Program tasks shall be reviewed annually by the Committee with the goal of determining the tasks for the following year in a timely fashion to allow for appropriate budgeting.
 - a. Any budgeted activity may commence once appropriated funds are available.
 - b. The Cities agree that best efforts must be used to ensure that all sample collection, analytical testing, and reporting of monitoring data associated with the Monitoring Plan comply with accepted quality assurance/quality control (QA/QC) protocols.
4. All water quality data shall be shared in a timely fashion with each city.

5. Although the intent of this IGA is to encourage cooperative efforts among the Standley Lake Cities on water quality efforts, nothing herein prevents any city from undertaking its own independent water quality effort at its own expense outside of the IGA.
6. Exhibits may be revised at any time without amendment to this IGA with unanimous agreement of the Committee.

B. Representation

1. Each City Manager, or their designee, will designate one representative to serve on the Standley Lake Water Quality Committee. Each representative is charged with administering the terms of the Agreement on behalf of their city, developing the Goals and Objectives, managing the budget, and establishing budget needs for the next year. The Committee will meet quarterly, at a minimum.
2. At least one member of the Committee, or their appointed representative, will attend Standley Lake Operating Committee meetings as needed to enhance communications concerning the operational and water quality aspects of Standley Lake.

C. Consultants, Technical Experts, and Legal Representation

1. The Cities hereby authorize their City Managers, or their designees, to enter into contracts for legal, contractor and/or consulting services recommended by the Committee pursuant to this Agreement and in accordance with Charter and ordinance provisions of the Cities.
2. The Committee may mutually agree to hire consultants, technical experts, and/or legal counsel to provide additional expertise as needed. Conflicts of interest will be given consideration as part of the selection process and may be the basis for not selecting any contractor/consultant/attorney. Any confidential information obtained by any firm in the course of the joint representation shall remain confidential and not be used to the detriment of any city in any subsequent representation.
3. Prior to entering into any contract for consulting, technical, or legal services, the participating committee members shall approve the scope and amount of such contracts. Any changes in scope and/or contract amounts also require approval from the participating Committee members.

D. Payment Terms

1. Core Program: Expenses associated with the Core Program shall be shared on an equal basis, with each city contributing 33.33% of the costs associated with the Core Program. To the extent possible and subject to each city's budget approval process, Thornton and Northglenn will pay an annual dues for Core Program costs to Westminster in January of each year to cover expenses for the coming year. Westminster shall be responsible for paying bills associated with Core Program expenses in a timely manner and will provide a quarterly statement of said expenses

to Thornton and Northglenn. Obligated monies shall be spent to the fullest extent possible, or a potential decrease in funding could occur.

2. Supporting Program: Contributions to the Supporting Program are voluntary in nature. Expenses associated with the Supporting Program, including the Monitoring Plan, may be covered through financial contributions and/or in-kind services, apportioned by mutual agreements between participating Cities and are subject to budgeting approval and the limitations contained in Section II. E.12, below. Once a city has agreed to contribute to a Supporting Program task or project for a given year, it shall use best efforts to honor that commitment. Budgeted expenses for the Supporting Program shall be paid by Northglenn and Thornton to Westminster in January of each year. Westminster shall be responsible for paying bills associated with the Supporting Program expenses in a timely manner and will provide a quarterly statement of said expenses to Thornton and Northglenn.
3. At the beginning of each calendar year, Westminster will submit an invoice to Thornton and Northglenn for their portions of the budgeted Core and Supporting Programs. Westminster will set up clearing accounts to track receipt and expenditure of Northglenn and Thorntons' funds. Westminster will pay all expenses and provide Northglenn and Thornton with quarterly reports. Any funds remaining at the end of the year will be appropriated as specified in Section II. D.6.
4. As per Section 6 of the November 28, 1994, Standley Lake Park Intergovernmental Agreement, Westminster agrees to contribute \$10,000 annually to be used for water quality improvements which may include water quality testing and monitoring. The \$10,000 shall not be included in those costs to support the Core Program.
5. Legal counsel and technical experts or consultants hired by the Committee pursuant to this Agreement shall submit invoices to Westminster for payment, which Westminster will pay for out of the appropriate Program budget. Thornton and/or Northglenn will reimburse Westminster for their portion of any budget exceedances approved per Section II.C.3. Legal counsel, technical experts, or consultants shall follow Westminster's purchasing procedures. Westminster will provide copies of itemized invoices from attorneys, technical experts, consultants, and vendors to Northglenn and Thornton.
6. Reserve Funds: The Core Program and Supporting Program can each accumulate up to \$10,000 in reserve funds for future use on Committee identified needs. The reserve funds are generated from any unappropriated funds left over at the end of the year within the specific program budget. Any funds in excess of \$10,000 will be refunded to the Cities proportional to their prior contributions for the specific program. Westminster will provide an accounting of the reserve fund for each program in the quarterly report, denoting the percent held by each of the Cities. If one of the Cities opts out of the agreement, their portion of the reserve fund will be refunded up to the amount not already committed per Section II. E.1.

E. General Provisions

1. This Agreement shall be effective upon the date last executed by the Cities and shall terminate on December 31, 2026. Additionally, this Agreement may be terminated, at any time, for any reason, by any city, upon serving the other Cities a thirty (30) day written notice of intent to terminate. The Agreement may also be terminated in the event that any city violates any of the terms of the Agreement and fails to cure the default within ten (10) days of receipt of written notice from the non-defaulting Cities which specifies the nature of the default and its cure. Termination by any city shall not relieve that party of its share of costs already incurred or committed to by mutual agreement with the other Cities pursuant to this Agreement.
2. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any prior, concurrent, subsequent breach of the same or any other of the terms or obligations of this Agreement. No waiver shall be effective unless made in writing.
3. This Agreement represents the entire and integrated Agreement between the Cities and supersedes prior Water Quality Agreements. This Agreement may be amended only by a written instrument executed by the Cities hereto.
4. If any clause, sentence, paragraph, or part of this Agreement or the application thereof to any city or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement or its application.
5. No documentation and/or correspondence prepared by a consultant, technical expert, or legal counsel retained pursuant to this Agreement or prepared as a joint position by the Committee under this Agreement shall be distributed to third parties without prior unanimous approval by the Committee. Each city can distribute independent documentation and/or correspondence stating their individual position, provided the documentation and/or correspondence do not imply joint concurrence or commitment by any of the other Cities hereto.
6. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities, and nothing contained in this Agreement shall be interpreted to give or allow any such claim or right of action to any third person. It is the expressed intention of the Cities that any person other than the Cities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
7. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.

8. This Agreement does not authorize the Committee's initiation of any lawsuit.
9. Any notice which may be given under the terms of this Agreement, including a change to the designees or addresses below, shall be made in writing, and shall be deemed made upon notification to the following:

CITY OF THORNTON
Jack Ethredge
City Manager/Utilities Director
9500 Civic Center Drive
Thornton, CO 80229

CITY OF WESTMINSTER
Donald M. Tripp
City Manager
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF NORTHGLENN
James Hayes
City Manager
11701 Community Center Drive
Northglenn, CO 80233

10. This Agreement may not be assigned by any party without the written consent of the other Cities.
11. Three originals of this Agreement shall be signed by the Cities.
12. This Agreement shall in no way obligate the Cities to budget funds to be spent pursuant to this Agreement. If a court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the Cities agree that the Agreement shall immediately be converted to a one-year contract, with automatic annual renewal through December 2026, unless previously terminated.

IN WITNESS WHEREOF, the Cities have hereto set their hand and seal on the dates indicated below.

ATTEST:

CITY OF THORNTON

Nancy Vincent, City Clerk

Jack Ethredge, City Manager/Utilities Director

APPROVED AS TO FORM:
Luis Corchado, City Attorney

City Attorney

Date

ATTEST:

CITY OF NORTHGLENN

Johanna Small, City Clerk

Joyce Downing, Mayor

APPROVED AS TO FORM:
Corey Hoffmann, City Attorney

City Attorney

Date

ATTEST:

CITY OF WESTMINSTER

Michelle Parker, City Clerk

Herb Atchison, Mayor

APPROVED AS TO FORM:
David Frankel, City Attorney

City Attorney

Date

Exhibit A: Core Program Tasks

Each city agrees to equally contribute financially to support these programs:

1. USGS gages
2. Code Red emergency call down system
3. Hazardous waste/Pharmaceutical take back
4. Public education (financial contribution)
5. Colorado Data Sharing Network
6. Annual Watershed Report preparation and Water Quality Control Commission presentation focused on chlorophyll *a*, nutrient loadings, and summary of accomplishments, up to \$20,000
7. Aquatic Nuisance Species program with direct impacts to water supply operations
8. Source Water Protection Plan – minor updates to document

Exhibit B: Supporting Program Tasks

Financial and/or in-kind support from the individual cities are optional for these programs:

1. SLWQ Monitoring Plan
2. SL Management Plan
3. Monitoring equipment purchase and O&M
4. Modeling – watershed and/or Standley Lake
5. Public education (in-kind contribution)
6. Wildfire projects
7. Annual Watershed Report preparation beyond Core Program \$20,000
8. Aquatic Nuisance Species programs beyond Core Program
9. Source Water Protection Program – major updates which may include the services of a Coordinator
10. Water Quality IGA staffing - Watershed Coordinator
11. Analyst education/appreciation
12. Special projects
13. Contingency fund (minimum of \$10,000)

RESOLUTION

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT AMONG THE CITIES OF NORTHGLENN, THORNTON, AND WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES.

WHEREAS, Standley Lake serves as a water supply for the Cities of Northglenn, Thornton, and Westminster; and

WHEREAS, it is prudent and necessary for the Cities to protect the water quality of Standley Lake; and

WHEREAS, the Cities have, in the past, effectively shared costs associated with the water quality efforts involving Clear Creek and Standley Lake and its tributaries based on the respective allocation of benefit of water diverted from Standley Lake; and

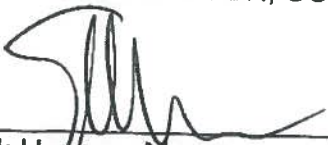
WHEREAS, it is beneficial for the Cities to continue to mutually hire consultants and legal counsel and to equitably share associated costs related to protecting water quality in Standley Lake and Clear Creek Basin, as outlined in the Intergovernmental Agreement among the Cities of Northglenn, Thornton, and Westminster (IGA), attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. The IGA is hereby approved, and the City Manager is authorized and directed to execute, and the City Clerk to attest, the IGA.
2. This IGA shall be effective upon execution by all parties.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Thornton, Colorado, on December 7, 2010.

CITY OF THORNTON, COLORADO



Erik Hansen, Mayor

ATTEST:



Nancy A. Vincent, City Clerk

INTERGOVERNMENTAL AGREEMENT
AMONG THE CITIES OF NORTHGLENN, THORNTON, AND
WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO
STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

THIS AGREEMENT is entered into this 23rd day of March, 2011, among the CITY OF THORNTON, hereinafter referred to as "Thornton," the CITY OF NORTHGLENN, hereinafter referred to as "Northglenn", and the CITY OF WESTMINSTER, hereinafter referred to as "Westminster" (Thornton, Northglenn, and Westminster together are hereinafter referred to as "Cities").

I. RECITALS

- A. The Cities each own rights to store water in Standley Lake and other important water rights that are essential to providing a domestic water supply to the residents of the Cities.
- B. Protection of these water rights and the water quality of these sources of domestic drinking water are of paramount importance to the Cities.
- C. Article XIV, Section 18, of the Colorado Constitution, Part 2 of Article 1 of Title 29, C.R.S., and 29-20-105, C.R.S., permit and encourage local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized functions, services, or facilities.
- D. Pursuant to an Intergovernmental Agreement dated June 28, 1989, and on August 24, 1995, December 18, 2000 and December 2005. (Prior Water Quality Agreements) the Cities have previously shared costs associated with water quality protection efforts involving Standley Lake and its tributaries.
- E. This agreement stipulates the intent of the Cities for administration of the Standley Lake Watershed Monitoring Program (Monitoring Program) which is used to protect and monitor the quality of water in Clear Creek and Standley Lake.
- F. It is beneficial and cost-effective for the Cities to mutually hire consultants and legal counsel, conduct water quality monitoring, implement water quality improvement projects, and to equitably share such costs related to water quality in Standley Lake and the Clear Creek Basin.
- G. It is prudent for the cities to execute a written agreement which sets forth the terms and guidelines for hiring consultants and legal counsel and sharing in the responsibility for the Monitoring Program.

- H. The Cities have developed the following Mission Statement. *To protect the quality of Standley Lake as a drinking water supply through the application of scientifically based and fiscally responsible management techniques. Optimize the health of Standley Lake and its watershed for current and future generations.*
- I. The Cities agree that it is mutually beneficial to cooperate with each other in order to improve the water quality in the Standley Lake Watershed by addressing stormwater flows into Standley Lake and environmental issues that may affect the high level of Standley Lake water quality.
- J. The Cities agree that it is mutually beneficial to continue joint participation in the Monitoring Program to assess the quality of water flowing into and within Standley Lake. Cooperative efforts may include costs for water quality monitoring, monitoring equipment, contract laboratory testing, legal services, consulting and engineering services, and capital costs associated with water quality improvement projects.

II. AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, the Cities agree as follows:

A. Cooperative Efforts

- 1. The Cities agree to divide the staff workload of the Standley Lake Watershed Monitoring Program in the same percentages as the cost sharing percentages in Section II D 1. The Cities further agree that best efforts must be used to ensure that all monitoring data meets acceptable quality assurance/quality control (QA/QC) standards.
- 2. It is agreed that each City's participation in any particular water quality effort is strictly voluntary. Projects will not be initiated without the verbal or written consent of all three Cities.

B. Representation

- 1. The City Managers of each City will designate one representative to serve on a Standley Lake Water Quality Committee (Committee) which will be charged with administering the terms of the Agreement, developing work schedules, monitoring schedules, and budget needs for the next budget year, and evaluating the progress of the Monitoring Program. The Committee will meet quarterly, at a minimum, for the above stated purposes. At least one member of the Committee will be present at Standley Lake Operating Committee (SLOC) meetings, on a quarterly basis, to enhance communications concerning the operational and water quality aspects of Standley Lake and to provide technical support to SLOC.

C. Consultants, Technical Experts, and Legal Representation

1. The Cities hereby authorize their City Managers or designees to enter into contracts for legal, contractor and/or consulting services pursuant to this Agreement and in accordance with Charter and ordinance provisions of the Cities.
2. The Cities may mutually agree to hire consultants, technical experts, and/or legal counsel to provide additional expertise related to implementation of the Monitoring Program. Conflicts of interest will be given consideration as part of the selection process and may be the basis for not selecting any contractor/consultant/attorney. Should a conflict of interest be perceived by any City after a contract has been initiated, that City may request termination of the contractor/consultant's/attorney representation or terminate its participation in any contract at its sole discretion. Any confidential information obtained by any firm in the course of the joint representation shall remain confidential and not be used to the detriment of any City in any subsequent representation.
3. Prior to entering into any contract for consulting, technical, or legal services, the Committee shall approve in writing, the scope and amount of such contracts, which amount shall be within the Monitoring Program budget.

D. Payment Terms

1. The cost sharing ratios below shall be used for those expenses that are invoiced such as legal and consulting fees and for equipment used in the Monitoring Program. These ratios reflect negotiated levels of participation and are based in part on ownership and purchased storage rights.

City of Northglenn – 20%
City of Thornton – 35%
City of Westminster – 45%

The cost of in-kind work such as water sampling, laboratory testing, equipment calibration and maintenance, data processing, meeting attendance, report writing and other administrative costs cannot be assigned and carried out in strict accordance with the participation ratios identified in this section. Oversight required to adhere exactly to the participation ratios for in-kind services would be resource prohibitive. However, every attempt will be made to delegate in-kind work assignments in consideration of the participation ratios.

2. As per Section 6 of the November 28, 1994, Standley Lake Park Intergovernmental Agreement (Park Agreement), Westminster agrees to contribute \$10,000 annually to be used for water quality improvements which may include regular water quality testing and monitoring. The \$10,000 shall not be included in those costs used to apportion the participation ratios identified in Section II.D I.

3. Legal counsel and technical experts or consultants hired by the Cities pursuant to this Agreement shall bill only one of the Cities. The Cities will agree, prior to contracting for legal or consulting services, which City will be billed. The billed City will in turn invoice the other Cities for reimbursement of their respective shares of the total invoiced costs. These invoiced Cities will have (30) days in which to remit payment to the City originally billed. Legal counsel and technical experts shall follow the purchasing procedures of the billed City. The billed City will not be reimbursed for administrative costs.
4. The billed City will provide, at the time of reimbursement invoicing, copies of itemized invoices from attorneys, consultants or vendors.

E. General Provisions

1. This Agreement shall be effective upon execution of this Agreement by the parties and shall terminate on December 31, 2015. Additionally, this Agreement may be terminated, at any time, for any reason, by any party, upon serving the other parties a thirty (30) day written notice of intent to terminate. The Agreement may also be terminated in the event that any party violates any of the terms of the Agreement and fails to cure the default within ten (10) days of receipt of written notice from the non-defaulting parties which specifies the nature of the default and its cure. Termination by any party shall not relieve that party of its share of costs already incurred [or committed to] by mutual agreement by the other parties pursuant to this Agreement.
2. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any prior, concurrent, subsequent breach of the same or any other of the terms or obligations of this Agreement. No waiver shall be effective unless made in writing.
3. This Agreement represents the entire and integrated Agreement between the parties and supersedes the Prior Water Quality Agreements. This Agreement may be amended only by a written instrument executed by the City Councils of the parties hereto.
4. If any clause, sentence, paragraph, or part of this Agreement or the application thereof to any party or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement or its application.

5. The Committee will review the Monitoring Program each year prior to each Cities budget preparation for the next fiscal year to assist with budget planning. The review will include, at a minimum:
 - Evaluation of sampling and testing schedules for all monitoring programs.
 - Assignment of sampling and laboratory testing for all monitoring programs, including adjustments from the previous year's program, in accordance with the participation ratios in Section II D 1.
 - Preparation of a budget which will include an estimate of legal/technical consultation costs, special studies that may be required, and new and replacement equipment costs that will be incurred during the upcoming year.
6. No documentation and/or correspondence prepared as a joint position by the Cities or a consultant, technical expert, or legal counsel retained pursuant to this Agreement shall be distributed to third parties without prior approval from each City's designee. Each City can distribute independent documentation and/or correspondence stating their individual position, provided the documentation and/or correspondence do not imply joint concurrence or commitment by any of the signatory parties.
7. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities, and nothing contained in this Agreement shall be interpreted to give or allow any such claim or right of action to any other third person on such Agreement. It is the expressed intention of the Cities that any person other than the Cities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
8. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.
9. This Agreement does not authorize the Cities participation in any lawsuit.

10. Any notice which may be given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing via the United States postal service, postage prepaid, to the other Cities, and unless amended by written notice, to the following:

CITY OF THORNTON
Jack Ethredge
City Manager/Utilities Director
9500 Civic Center Drive
Thornton, CO 80229

CITY OF WESTMINSTER
Brent McFall
City Manager
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF NORTHGLENN
William Simmons
City Manager
11701 Community Center Drive
Northglenn, CO 80233

11. This Agreement may not be assigned by any party without the written consent of the other parties.
12. Three originals of this Agreement shall be signed by the parties.
13. This Agreement shall in no way obligate the Cities to budget funds to be spent pursuant to this Agreement. If a court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately be converted to a one year contract, with automatic annual renewal through December 2010, unless previously terminated.

IN WITNESS WHEREOF, the parties have hereto set their hand and seal on the dates indicated below.

ATTEST:

Darcy A. Vincent
City Clerk

CITY OF THORNTON
Jack Ethredge
Jack Ethredge, City Manager

APPROVED AS TO FORM:

Margaret Emerald
City Attorney

12/16/10
Date

ATTEST:

John Smith
City Clerk

CITY OF NORTHGLENN
Joyce Downing
for Joyce Downing, Mayor

APPROVED AS TO FORM:

Cory Z. Hoff
City Attorney

1/13/11
Date

ATTEST:

Linda Gray
City Clerk

CITY OF WESTMINSTER

Nancy McNally
Nancy McNally, Mayor

APPROVED AS TO FORM:

M. A. Kelly
City Attorney

3-23-11
Date